

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VICTOR K. LEMMONS, JR.,
Plaintiff,

v.

MELISSA HARRINGTON,
Defendant.

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C.A. No. 21-52 Erie

**District Judge Susan Paradise Baxter
Magistrate Judge Richard A. Lanzillo**

MEMORANDUM ORDER

Plaintiff Victor K. Lemmons, Jr., a former inmate incarcerated at the Erie County Prison in Erie, Pennsylvania (“ECP”), initiated this civil rights action on or about February 4, 2021, by filing a motion to proceed *in forma pauperis* (“ifp motion”), accompanied by a *pro se* complaint against Defendant Melissa Harrington, ECP’s Head of Commissary. This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. Judge Lanzillo granted Plaintiff’s ifp motion on August 25, 2021, and the complaint was filed on that date. The case was subsequently reassigned to the undersigned, as presiding judge, with Judge Lanzillo remaining as referred magistrate judge.

Plaintiff alleges a single state law tort claim based upon Defendant’s alleged refusal to refund him the sum of \$39.25 for an alleged commissary purchase of items he never received. On December 10, 2021, Judge Lanzillo issued a Magistrate Judge’s Report and Recommendation (“R&R”) recommending that Plaintiff’s complaint be dismissed *sua sponte*, under 28 U.S.C. §1915e, for lack of jurisdiction [ECF No. 16]. Objections to the R&R were due to be filed by

February 25, 2022, after two extensions were granted as a result of successive address changes by Plaintiff; however, no timely objections have been received.

After de novo review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 28th day of February, 2022;

IT IS HEREBY ORDERED that Plaintiff's complaint is DISMISSED for lack of subject matter jurisdiction, without prejudice to Plaintiff's right to pursue his claim in state court, if he so desires. The report and recommendation of Magistrate Judge Lanzillo, issued December 10, 2021 [ECF No. 16], is adopted as the opinion of the court.

The Clerk is directed to mark this case CLOSED.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge

all parties of record